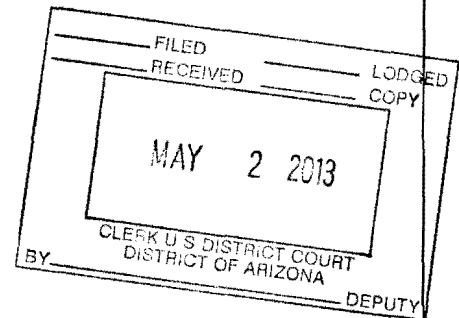


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3 District of Arizona
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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 United States of America,
10 Plaintiff,
11 vs.
12 Chad Ayers,
13 Defendant.

14 CR 11-794-TUC-RCC (CRP)

15 **PLEA AGREEMENT**

16 Plaintiff, United States of America, and defendant, Chad Ayers, hereby agree to the
17 following disposition of this matter:

18 **PLEA**

19 Defendant will plead guilty to Count 1 of the Indictment charging, Conspiracy to Commit
20 Wire Fraud and Count 15, Conspiracy to Commit Transactional Money Laundering, both felony
21 offenses.

22 **TERMS**

23 Defendant understands that the Court is required to consider the United States Sentencing
24 Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining
25 defendant's sentence. Defendant understands, however, that the Sentencing Guidelines are only
26 advisory.

27

28

1 1. **AGREEMENT REGARDING SENTENCING**

2 The parties have agreed to a sentencing range of 0 to 5 years in prison. The parties agree
3 and the defendant understands that it shall be up to the district court's discretion to sentence the
4 defendant with this range. The defendant further understands that if he is sentenced to any
5 period of supervised release or probation, the length of the terms of either condition shall be
6 determined by the district court.

7 The parties further agree that for the purposes of this plea agreement, the defendant shall
8 be attributable for the losses associated with the following transactions in the indictment under
9 the United States Sentencing Guidelines: 6840 N. Vista Del Pueblo (Transactions #9 and #10)
10 and 5221 W. Rhyolite Loop (Transaction #13). The parties agree that the losses relating to these
11 properties is between \$1,000,000 and \$2,500,000. The parties further agree that the sentence for
12 each count to which the defendant has entered a plea will run concurrently. The government
13 agrees that at the time of sentencing, if the court accepts this plea, the government will move to
14 dismiss the remaining charges set forth in the indictment to which the defendant has not entered
15 a plea of guilty.

16

17 2. **MAXIMUM PENALTIES**

18 A. Count 1: A violation of Title 18 United States Code, Section 1349 (Conspiracy to
19 Commit Wire Fraud) is punishable by a maximum fine of \$250,000, a maximum term of
20 imprisonment of twenty (20) years, a term of supervised release of three (3) years, or all three
21 combined. If probation is available, the maximum period of probation is five (5) years.

22 B. Count 15: A violation of Title 18 United States Code, Section 1956(h)
23 (Conspiracy to Commit Transactional Money Laundering) is punishable by a maximum fine of
24 \$250,000, a maximum term of imprisonment of ten (10) years, a term of supervised release of
25 three (3) years, or all three combined. If probation if available, the maximum period of
26 probation is five (5) years.

27 C. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform
28 Act of 1984, the Court:

4 (2) may order defendant to pay a fine, which may include the costs of
5 probation, supervised release or incarceration, unless, pursuant to Title 18, United States Code,
6 Section 3611, the defendant establishes the applicability of the exceptions found therein; and

7 (3) may order defendant, pursuant to Title 18, United States Code, Section
8 3583, to serve a term of supervised release when required by statute.

9 D. Pursuant to Title 18, United States Code, Section 3013, the Court is required to
10 impose a special assessment on defendant of \$100.00 per count. Defendant agrees that the
11 special assessment shall be due at the time defendant enters the plea of guilty, but in no event
12 shall it be paid later than the time of sentencing.

14 3. AGREEMENT TO DISMISS OR NOT PROSECUTE

15 a. This office will not prosecute the defendant for any offenses committed by the
16 defendant that are known to the government at the time of defendant's plea of guilty.

17 b. This agreement does not, in any manner, restrict the actions of the United States in any
18 other district nor bind any other United States Attorney's Office.

4. WAIVER OF DEFENSES AND APPEAL RIGHTS

21 a. The defendant waives any and all motions, defenses, probable cause determinations,
22 and objections which the defendant could assert to the indictment or information or to the
23 Court's entry of judgment against the defendant and imposition of sentence upon the defendant,
24 providing the sentence is consistent with this agreement. The defendant further waives: (1) any
25 right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the
26 imposition of sentence or any order of restitution that the court imposes upon defendant under
27 Title 18, United States Code, Section 3742 (sentence appeals); and (3) any right to collaterally
28 attack defendant's conviction and sentence under Title 28, United States Code, Section 2255, or

1 any other collateral attack. The defendant acknowledges that this waiver shall result in the
2 dismissal of any appeal or collateral attack the defendant might file challenging his conviction,
3 sentence, any order of restitution the court imposes or any other matter relating to this case.

4 b. The United States likewise will waive its right to appeal the sentence imposed by the
5 court and the manner in which the court determines the defendant's sentence, as long as the
6 sentence is consistent with the terms of this agreement.

7

8 **5. REINSTITUTION OF PROSECUTION**

9 If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the
10 United States will be free to prosecute the defendant for all charges of which it has knowledge,
11 and any charges that have been dismissed because of this plea agreement will be automatically
12 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the
13 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later
14 charges or proceedings. The defendant understands that any statements made at the time of the
15 defendant's change of plea or sentencing may be used against the defendant in any subsequent
16 hearing, trial, or proceeding as permitted by Fed. R. Crim. P. 11(e)(6).

17

18 **6. PLEA ADDENDUM**

19 This written plea agreement, and any written addenda filed as attachments to this plea
20 agreement, contain all the terms and conditions of the plea. Any additional agreements, if any
21 such agreements exist, shall be recorded in a separate document and may be filed with the Court
22 under seal. Accordingly, additional agreements, if any, may not be in the public record.

23

24 **7. AGREEMENT TO MAKE RESTITUTION**

25 Defendant agrees to a restitution judgment of \$459,250 relating to the 5221 W. Rhyolite
26 Loop property (transaction #13 in the indictment); and a \$380,000 restitution judgment relating
27 to the 6840 N. Vista Del Pueblo property (transactions #9 and #10 in the indictment). The
28 restitution order shall be joint and several with any co-defendant/defendant's restitution order

1 issued in relation to the above-properties. The defendant further agrees that, pursuant to 18
2 U.S.C. §3613, all monetary penalties, including restitution imposed by the Court, will be due
3 immediately and subject to immediate enforcement by the Government as provided for in
4 Section 3613. If the Judgment in a Criminal Case imposes a schedule of payments, the
5 defendant understands that the schedule of payments is merely a minimum schedule of payments
6 and not the only method, nor a limitation on the methods, available to the government to enforce
7 the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau
8 of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically
9 directs participation or imposes a schedule of payments. The government agrees that there will
10 be no post-judgment interest on the amount of restitution set by the court.

11

12 **8. ASSETS**

13 The defendant agrees to make a full accounting of all assets, including real and personal
14 property in which he has any actual, beneficial, or joint ownership interest, wherever located,
15 available to be applied toward restitution and to cooperate fully with the Government and the
16 United States Probation Office to execute such documentation as may be necessary to secure
17 such assets for application to restitution. The defendant further agrees that he will not sell, hide,
18 waste, destroy, or otherwise devalue or transfer any such assets or property before sentencing,
19 without the prior approval of the Government. The defendant understands and agrees that his
20 failure to comply with this provision of the Plea Agreement will result in his receiving no credit
21 for acceptance of responsibility. The defendant's cooperation obligations include fully and
22 truthfully completing the Department of Justice's Financial Statement of Debtor form within ten
23 (10) days of the change of plea hearing; submitting to a financial deposition or an interview or
24 interviews (if necessary) regarding his past and present financial condition, as well as the
25 financial condition of all members of his household (including but not limited to spouse and
26 children), prior to sentencing; providing any documentation requested by the Government or the
27 United States Probation Office regarding his financial condition as well as the financial condition
28 of all household members (including but not limited to that of spouse and children); and fully

1 and truthfully answering all questions regarding his past and present financial condition in such
2 interview(s). The defendant further agrees to permit the United States Probation Office to
3 provide copies to the United States Attorney's Office for the District of Arizona any and all
4 financial information provided by the defendant to the United States Probation Office.

5

6 **9. DISCLOSURE OF INFORMATION TO U.S. PROBATION OFFICE**

7 A. The defendant will cooperate fully with the United States Probation Office. Such
8 cooperation will include truthful statements in response to any questions posed by the Probation
9 Department including, but not limited to:

10 (1) All criminal history information, i.e., all criminal convictions as defined
11 under the Sentencing Guidelines.

12 (2) All financial information, e.g., present financial assets or liabilities that
13 relate to the ability of the defendant to pay a fine or restitution.

14 (3) All history of drug abuse which would warrant a treatment condition as
15 part of sentencing.

16 (4) All history of mental illness or conditions which would warrant a
17 treatment condition as a part of sentencing.

18

19 **ELEMENTS AND FACTUAL BASIS**

20 **A. Conspiracy to Commit Wire Fraud (Count 1)**

21 I, Chad Ayers, understand that the essential elements of Conspiracy to Commit Wire
22 Fraud, in violation of Title 18, United States Code, Sections 1349 and 1343 are as follows:

23 (1) Within the time frame set forth in the Indictment, in the District of Arizona, there
24 was an agreement between two or more persons to commit one or more crimes of Wire Fraud as
25 charged in the Indictment;

26 (2) Defendant became a member of the conspiracy knowing of its object (Wire
27 Fraud) and intending to help accomplish it.

28

1 **B. Wire Fraud**

2 I, Chad Ayers, understand that the essential elements of Wire Fraud, in violation of Title
3 18, United States Code, Section 1343, are as follows:

4 (1) Within the time frame set forth in the Indictment, in the District of Arizona,
5 defendant knowingly carried out a scheme or plan to obtain money or property by making false
6 statements or promises;

7 (2) Defendant knew that the statements or promises were false;

8 (3) The promises or statements were material, that is, they had a natural tendency to
9 influence, or were capable of influencing, a person to part with money or property;

10 (4) Defendant acted with the intent to defraud; and

11 (5) Defendant used, or caused to be used, wire, radio or television communications in
12 interstate or foreign commerce to carry out an essential part of the scheme.

13
14 **C. Conspiracy to Commit Transactional Money Laundering (Count 15)**

15 I, Chad Ayers, understand that the essential elements of Conspiracy to Commit
16 Transactional Money Laundering Greater than \$10,000, in violation of Title 18, United States
17 Code, Section 1956(h) are as follows:

18 (1) Within the time frame set forth in the Indictment, in the District of Arizona, there
19 was an agreement between two or more persons to commit one or more of the crimes of
20 Transactional Money Laundering as charged in the Indictment;

21 (2) Defendant became a member of the conspiracy knowing of at least one of its
22 objects (Transactional Money Laundering) and intending to help accomplish it; and

23
24 **D. Transactional Money Laundering Greater than \$10,000**

25 (1) In the District of Arizona defendant knowingly engaged or attempted to engage in
26 a monetary transaction;

27 (2) The defendant knew the transaction involved in the monetary transaction involved
28 criminally derived property;

FACTUAL BASIS

6 From approximately June, 2004 through October, 2006, I, Chad Ayers, agreed with
7 others to commit loan fraud relating to several real estate properties. I was involved in a “cash
8 back” mortgage fraud scheme perpetrated by myself and others in the District of Arizona. The
9 purpose of this conspiracy was to obtain mortgage financing from the lenders so that a portion of
10 the loan proceeds could be shared amongst the members of this conspiracy. I knew that as part
11 of this conspiracy, material false statements were submitted on behalf of the loan applicants or
12 straw buyers to the lenders. These material false statements were submitted through the loan
13 applications or other false documents in order to qualify the loan applicants for financing to
14 purchase the properties.

15 I knew that the loan applications that were submitted contained at least one or more of the
16 following material false statements: (1) false statement of intent to occupy the property as a
17 primary residence; (2) inflated income or assets; or (3) false representations concerning the loan
18 applicants' current resident address. As part of this conspiracy, I signed letters on behalf of
19 straw buyers that contained material false statements including a false letter regarding the loan
20 applicant's stated intent to occupy the property as a primary residence. In connection with the
21 fraud scheme, wires, in interstate commerce, were used to transfer money from the lender to the
22 title companies for the funding of the loans.

23 In many of the real estate transactions members of the conspiracy including myself
24 conducted or knowingly caused to be conducted financial transactions in Arizona with proceeds
25 that were derived from our scheme to defraud. These proceeds were disbursed by the title
26 company after the lenders had funded the fraudulently obtained loans. I conducted or knowingly
27 caused to be conducted some of these transactions with these funds knowing that the money we
28 received represented the proceeds from our scheme to defraud. I agree that the government

1 could prove that these funds were derived from our scheme to defraud, specifically wire fraud or
2 conspiracy to commit wire fraud. Many of these transactions conducted in this fashion involved
3 proceeds of a value of greater than \$10,000.

4 As a result of the scheme to defraud the properties eventually went into foreclosure
5 resulting in significant losses to the lenders.

6 The above facts are a summary of my involvement in this matter for the purposes of this
7 plea agreement only. This summary does not include each and every fact that I know about this
8 case.

9

10 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

11 I have read each of the provisions of the entire plea agreement with the assistance of
12 counsel and understand its provisions.

13 I have discussed the case and my constitutional and other rights with my attorney. I
14 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty, to
15 trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present
16 evidence in my defense, to remain silent and refuse to be a witness against myself by asserting
17 my privilege against self-incrimination -- all with the assistance of counsel -- and to be presumed
18 innocent until proven guilty beyond a reasonable doubt.

19 I agree to enter my guilty plea as indicated above on the terms and conditions set forth in
20 this agreement.

21 I have been advised by my attorney of the nature of the charges to which I am entering
22 my guilty plea. I have further been advised by my attorney of the nature and range of the
23 possible sentence and that my ultimate sentence will be determined after consideration of the
24 advisory Sentencing Guidelines.

25 My guilty plea is not the result of force, threats, assurances or promises other than the
26 promises contained in this agreement. I agree to the provisions of this agreement as a voluntary
27 act on my part and I agree to be bound according to its provisions.

28

1 I fully understand that, if I am granted probation or placed on supervised release by the
2 court, the terms and conditions of such probation/supervised release are subject to modification
3 at any time. I further understand that, if I violate any of the conditions of my
4 probation/supervised release, my probation/supervised release may be revoked and upon such
5 revocation, notwithstanding any other provision of this agreement, I may be required to serve a
6 term of imprisonment or my sentence may otherwise be altered.

7 I agree that this written plea agreement contains all the terms and conditions of my plea
8 and that promises made by anyone (including my attorney), and specifically any predictions as to
9 the guideline range applicable, that are not contained within this written plea agreement are
10 without force and effect and are null and void.

11 I am very satisfied that my defense attorney has represented me in a competent manner.

12 I am fully capable of understanding the terms and conditions of this plea agreement. I am
13 not now on or under the influence of any drug, medication, liquor, or other intoxicant or
14 depressant, which would impair my ability to fully understand the terms and conditions of this
15 plea agreement.

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5.2-13

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Chad Ayers
Defendant

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DEFENSE ATTORNEY'S APPROVAL

I have discussed this case and the plea agreement with my client, in detail and have advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea including the maximum statutory sentence possible. I have further discussed the concept of the advisory sentencing guideline with the defendant. No assurances, promises, or representations have been given to me or to the defendant by the United States or by any of its representatives which are

1 not contained in this written agreement. I concur in the entry of the plea as indicated above and
2 on the terms and conditions set forth in this agreement as in the best interests of my client. I
3 agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all
4 the requirements of Fed. R. Crim. P. 11.

5

6 5-2-13

7 Date

8 
Richard Bock 
Daniel Mestaz
9 Attorneys for Defendant

10

UNITED STATES' APPROVAL

11

I have reviewed this matter and the plea agreement. I agree on behalf of the United
12 States that the terms and conditions set forth are appropriate and are in the best interests of
13 justice.

14

15

JOHN S. LEONARDO
United States Attorney
16 District of Arizona

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5/2/13

20 Date

 Jonathan B. Granoff
21 Assistant U.S. Attorney

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